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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,122	11/13/2001	Ronald L. Ream	112703-202	1413

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EXAMINER

TRAN, SUSAN T

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 05/20/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/992,122

Applicant(s)

REAM ET AL.

Examiner

Susan Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Receipt is acknowledged of applicant's Amendment and Terminal Disclaimer filed 03/26/03.

Terminal Disclaimer

The terminal disclaimer filed on 03/26/03 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of US 6,355,265 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Yotka US 5,536,511.

Yotka teaches a chewing gum product comprising a gum pellet cover by hard coating containing from about 1% to about 100% sugar or sugar alcohol to the coating, and the coating maybe about 20% to about 50% of the weight of the finished gum product (see abstract, and column 4, lines 10-24). The chewing gum product comprises

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elastomer, plasticizers, waxes, emulsifiers, inorganic filler, and softener (column 4, lines 53 through column 5, lines 1-25).

The examiner notes that Yatka does not teach the use of medicament in the coating composition. However, Yatka teaches the use of calcium carbonate or magnesium carbonate, and talc, which are well known minerals in pharmaceutical art. Thus, such language does suggest the use of medicament in the coating since applicants' claims 9 and 16 recite "minerals" as medicament that can be used in the coating.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 8-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Barkalow et al. US 6,303,159.

Barkalow teaches a chewing gum coated with a coating composition comprising about 20% to about 50% of the weight of the final product (column 2, lines 43-63; and column 6, lines 6-10). The coating composition comprises sugar sweeteners, calcium

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carbonate or magnesium carbonate, titanium dioxide, and from about 0.05% to about 1.0% of acesulfame-K (columns 3-5). The chewing gum/tablet center comprises elastomer, plasticizers, waxes, emulsifiers, inorganic filler, and softener (column 3, lines 14 through column 4, lines 1-6).

The examiner notes that Barkalow does not specifically teach the use of medicament in the coating composition. However, Barkalow teaches the use of titanium dioxide, talc, calcium carbonate or magnesium carbonate, which are well known minerals in pharmaceutical art. Thus, such language does suggest the use of medicament in the coating since applicants' claims 9 and 16 recite "minerals" as medicament that can be used in the coating.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barkalow et al. US 6,303,159, in view of Comollo US 3,984,574.

The examiner noted that Barkalow et al. is also owned by William Wrigley Jr. Company, however, under the 103 (c) rule, subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where

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the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. Therefore, until applicant provides a statement disclosing that the instant application is "owned by the same person or subject to an obligation of assignment to the same person", the examiner maintains the above 102(e) rejection.

Barkalow is relied upon for the reasons stated above. Barkalow does not specifically teach the use of medicament in the coating composition. However, Barkalow teaches the use of titanium dioxide, talc, calcium carbonate or magnesium carbonate in the coating composition. Therefore, it is the position of the examiner that Barkalow does teach the use of medicament in the coating because, Comollo teaches a chewing gum composition comprising mineral adjuvants, including calcium carbonate, talc, and tricalcium phosphate (column 3, lines 65-68). Thus, it would have been obvious for one of ordinary skill in the art to combine the teachings of Barkalow and Comollo to use calcium carbonate, talc, or titanium dioxide as a medicament in the chewing gum coating composition.

Claims 8-11, 14-18, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monte US 5,578,336.

Monte teaches a soft candy/gum center coated with coating layers containing vitamin and enzyme (see abstract, columns 3-4). The coating further comprises sugar or sugarless sweetener, including xylitol (columns 2-3).

Monte does not teach the weight percent of the coating being at least 50% of the product as claimed in claim 8. However, Monte teaches the coating composition is applied to the gum center in a plurality of coating layers to obtain the thickness desired; or to increase the sealing effect of the resulting coatings to prevent moisture from penetrating the coating and contacting vitamins or enzymes applied to the gum core (column 3, lines 18-23; and example 29). Absent of showing criticality over the claimed amount of at least 50% of the product, it would have been obvious for one of ordinary skill in this art to, by routine experimentation determine a suitable amount of coating to obtain the claimed invention, because the reference teaches the advantageous results in the use of a coating composition to protect the gum center from moisture. The expected result would be a coated chewing gum composition, which, during storage, the vitamins and enzymes are protected by a coating composition from biodegradation and decomposition.

Claims 12, 13, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monte US 5,578,336, in view of Yotka US 5,536,511.

Monte is relied upon for the reason stated above. Monte is silent as to the teaching of the amount of sugar or sugarless sweetener in the coating composition.

Yotka teaches a chewing gum product comprising a gum pellet cover by hard coating containing from about 1% to about 100% sugar or sugar alcohol to the coating, and the coating maybe about 20% to about 50% of the weight of the finished gum product (see abstract, and column 4, lines 10-24). The chewing gum product comprises

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elastomer, plasticizers, waxes, emulsifiers, inorganic filler, and softener (column 4, lines 53 through column 5, lines 1-25). Thus, it would have been obvious for one of ordinary skill in the art to modify the coating of Monte using suitable amounts of sugar or sugarless sweetener in view of the teaching of Yatka with the expectation of at least similar result, because the references teach the advantageous results in the use of sugar or sugarless in a chewing coating composition.

Pertinent Arts

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dansereau et al. and Hersh are cited as being of interest for the teachings of coated chewable tablet/gum.


Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Tran whose telephone number is (703) 306-5816. The examiner can normally be reached on Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.


THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600